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Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

CHASOM BROWN, WILLIAM BYATT,
JEREMY DAVIS, CHRISTOPHER
CASTILLO, and MONIQUE TRUJILLO
individually and on behalf of all other similarly
situated,

Plaintiffs,

v.

GOOGLE LLC,

Defendant.

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Case No.: 4:20-cv-03664-YGR-SVK

**PLAINTIFFS' RESPONSE TO GOOGLE
LLC'S MOTIONS TO SEAL AND
REMOVE DOCUMENTS (DKTS. 1098,
1099, 1100)**

Judge: Hon. Yvonne Gonzalez Rogers
Location: Courtroom 1 – 4th Floor

I. INTRODUCTION

On April 1, 2024, Plaintiffs filed their unopposed motion for approval of the class action settlement (Dkt. 1096) and an administrative motion with the supporting declarations and exhibits (Dkt. 1097), including the settlement agreement (Dkt. 1097-4). Notably, Plaintiffs shared a draft approval motion with Google’s counsel prior to filing the motion. Google’s counsel proposed a few edits (*see* Dkt. 1097-15), but never raised any sealing-related issues or concerns. Waiting four days, Google now seeks to remove those filed documents so they can be replaced with redacted copies (Dkt. 1098, 1099, 1100) (the “Motions”).

The Motions should be denied in part. Plaintiffs do not oppose Google’s requests to seal to the extent Google seeks to redact information that has no bearing on class members’ ability to evaluate the settlement and would reveal sensitive business information. But the Court should deny the Motions insofar as Google seeks to redact information about 1) the value of the settlement, as explained in the approval motion, and (2) the quantity of data that Google is required to delete, as memorialized in the settlement agreement.

II. LEGAL STANDARD

“[T]o ensure class members have the opportunity to meaningfully participate in the settlement approval process specified in Federal Rule of Civil Procedure 23(e), they must, through access to court files, be able to review the bases of the proposed settlement and the other documents in the court record.” 2 McLaughlin on Class Actions § 6:22 (20th ed. 2023). “A party seeking to seal a document filed with the court must (1) comply with [the relevant rules]; and (2) rebut ‘a strong presumption in favor of access’ that applies to all documents other than grand jury transcripts or pre-indictment warrant materials.” *Thomas v. MagnaChip Semiconductor Corp.*, 2017 WL 4750628, at *4 (N.D. Cal. Oct. 20, 2017) (citing *Kamakana v. City and County of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006)).

Because Google’s Motions concern issues regarding settlement approval, a “compelling reasons” standard should apply. *See MagnaChip*, 2017 WL 4750628, at *4 (applying “compelling reasons” standard to motion to file under seal in connection with motion for

preliminary approval of class action settlement); *see also In re Google Inc. Gmail Litig.*, 2014 WL 10537440, at *4 (N.D. Cal. Aug. 6, 2016) (applying higher “compelling reasons” standard to documents submitted with briefing on motion for class certification).¹ Under the “compelling reasons” standard, the party seeking to seal must demonstrate that there is both a “high probability” that a compelling interest would be harmed if material was disclosed and that “there are no alternatives to closure that would adequately protect the compelling interest.” *Perry v. Brown*, 667 F.3d 1078, 1088 (9th Cir. 2012) (internal marks omitted).

III. ARGUMENT

Plaintiffs respectfully request that the Court deny Google’s Motions to the extent Google seeks to seal information that class members and the public should have access to in order to evaluate the settlement.

First, Plaintiffs object to Google’s request to seal portions of the approval motion that address the value of the settlement (Dkt. 1096 at pp. 13:18, 15:20-28). The “compelling reason” standard applies to this information because it will help class members and the public evaluate the merits of the settlement. *See MagnaChip*, 2017 WL 4750628, at *4. Google does not show any such compelling reason. The descriptions and calculations that Google seeks to seal are based on documents and methodologies the Court *already* discussed in its class certification order in denying Google’s motion to exclude Plaintiffs’ damages expert. Google, for example, seeks to redact as confidential and proprietary “internal project names” (Dkt. 1099-1 at 1:17), but there is just one internal project name, and it was already included, without redaction, in the Court’s class certification order (*see* Dkt. 803 at 4:26, 5:15, 11:12, 11:15). Google’s claim that this information somehow places Google “at an increased risk of cybersecurity threats” (Dkt. 1099-1 at 1:24-25), based solely on assertions by its outside counsel (Dkts. 1099-1, 1100), is insufficient to establish a compelling reason for sealing a project name that has been public for many months. The

¹ The moving party bears the burden to justify its requests to seal information. *Center for Auto Safety v. Chrysler Group, LLC*, 809 F.3d 1092, 1096 (9th Cir. 2016) (“[a] party seeking to seal a judicial record then bears the burden of overcoming this strong presumption by meeting the ‘compelling reasons’ standard”) (bracket in original).

1 calculations Google proposes redacting are likewise based on methodologies and figures the
2 Court already discussed in its class certification order. Dkt. 803 at 5–6.

3 *Second*, regarding Google’s request to remove the settlement agreement (Dkt. 1097-4)
4 and replace it with a further redacted version (Dkt. 1098-3), Plaintiffs are most concerned
5 regarding Google’s request to redact information from page 8 regarding the number of data event
6 records impacted by this settlement. There is nothing confidential or proprietary regarding that
7 information, and the public is entitled to that information to evaluate the merits of the settlement.
8 The fact that Google’s proposed redacted version of the approval motion still includes that same
9 quantification in other parts (*see* Dkt. 1099-4 at 1:14, 11:22, 12:25) demonstrates the lack of any
10 compelling reason to remove that information from the agreement. Moreover, Google’s failure
11 to promptly seek sealing at the time the approval motion and settlement agreement were filed
12 further demonstrates its lack of a “compelling” reason to change course now. Dozens of news
13 outlets have already reported on the number of event records impacted by the settlement,
14 including The New York Times,² The Wall Street Journal,³ NPR,⁴ Time,⁵ Reuters,⁶ and the
15 Associated Press,⁷ among others. Google’s spokesman provided statements to these outlets about
16 the breadth of the Settlement and how that information should be deleted. *See, e.g., supra* n.6.
17 Here, Google has not explained how details of the quantity or value of that to-be-deleted data
18 could impact its business or cybersecurity interests.

19 Plaintiffs have no objection to any of Google’s other proposed redactions to the settlement
20 agreement, including for example the specific log names in Exhibits B and C (Plaintiffs initially
21 marked those for sealing, Dkt. 1097).

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23 ² <https://www.nytimes.com/2024/04/01/technology/google-chrome-browser-data.html>

24 ³ <https://www.wsj.com/tech/google-pledges-to-destroy-browsing-data-to-settle-incognito-lawsuit-1febfde5>

25 ⁴ <https://www.npr.org/2024/04/01/1242019127/google-incognito-mode-settlement-search-history>

26 ⁵ <https://time.com/6962521/google-incognito-lawsuit-data-settlement/>

27 ⁶ <https://www.reuters.com/technology/google-destroy-browsing-data-settle-consumer-privacy-lawsuit-2024-04-01/>

28 ⁷ <https://apnews.com/article/google-incognito-mode-tracking-lawsuit-settlement-8b30c9397f678bc4c546ab84191f7a9d>

1 **IV. CONCLUSION**

2 For these reasons, Plaintiffs respectfully request that the Court deny in part Google's
3 Motions.

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5 Dated: April 8, 2024

Respectfully submitted,

6 By: /s/Mark C. Mao

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